

**REMARKS**

Claims 17-23 and 38-46 are pending in the present application. Claims 17-23 and 39-46 are hereby canceled. Amendment of claim 38 and entry of new claims 47-51 is hereby requested. Upon entry of the amendment, claims 38 and 47-51 will be pending in the present application.

The proposed amendment to claim 38 finds support at least at original claim 1 and pages 25-28 of the specification. Proposed new claims 47-51 find support at least at original claims 2-5, and pages 22-24 and 37.

**Examiner's Interview of July 1, 2008**

Applicants thank the Examiner for the courtesy of the telephonic interview with Applicants' representative, Brian Ho. All pending claims were discussed. Applicant's representative presented arguments and proposed claim amendments substantially consistent with those presented herein. The Examiner indicated that he would consider entry of the amendment to claim 38, presented herein.

**Claim Rejections Under 35 USC §112****Claims 38 and 45**

Claims 38 and 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner states that claim 38 is indefinite because it is unclear how a nucleic acid having 95% identity to SEQ ID NO: 75 can also comprise SEQ ID NO: 75.

The proposed amendment to claim 38 removes the 95% sequence identity limitation. Accordingly, Applicants assert that the claim, along with new proposed claims 47 and 48, are not indefinite. Claim 45 has been canceled.

Applicants respectfully request that this basis for rejection be withdrawn.

Claims 17-23 and 40-44

Claims 17-23 and 40-44 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors(s), at the time the application was filed, had possession of the claimed invention.

The Examiner requires Applicants to point to support for “A transgenic plant having an altered response to vernalization, wherein the transgenic plant comprise a nucleic acid having at least 95% identity to SEQ ID NO: 75.”

Claims 17-23 and 40-44 have been canceled. Accordingly, this basis of rejection is now moot. Applicants request that this basis of rejection be withdrawn.

Claims 17-23 and 38-39

Claims 17-23 and 38-39 remain rejected and new claims 40-46 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which is not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 17-23 and 39 are hereby canceled. Applicants assert that claim 38, as proposed for amendment, is enabled. Methods for making the claimed isolated nucleic acid, *e.g.*, chemical synthesis as discussed on page 20 of the specification, are known.

The specification as filed contains enabling disclosure for several uses of the claimed isolated nucleic acids. The isolated nucleic acid may be used to construct molecular markers and be used in marker-assisted breeding programs. *See* Specification at originally filed claim 33; page 46, last paragraph, to page 47, last paragraph. The isolated nucleic acid may be used to genetically transform plants. *See* Specification at page 42-43. In particular, the isolated nucleic acid may be used to generate transgenic plants having an altered response to vernalization. *See* Specification at page 5-6, bridging paragraph; page 24, last paragraph; and page 38, first full paragraph.

For these reasons, Applicants request that this basis for rejection be withdrawn.

### **Claim Rejections Under 35 USC §101**

Claims 19, 21, 23, 41 and 43 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 19, 21, 23, 41, and 43 have been canceled. Accordingly, this basis for rejection is moot. Applicants request that the rejections under 35 U.S.C. 101 be withdrawn.

### **Examiner's Comments on the Prior Art**

Applicants acknowledge and thank the Examiner for his comments on claims 17-23 and 38-46 being deemed free from the prior art, given the failure of the prior art to teach or reasonably suggest an isolated polynucleotide of SEQ ID NO: 75, or an isolated nucleic acid comprising a sequence having at least 95% identity to SEQ ID NO: 75 or 79; vector, cell, and transgenic plant comprising said nucleic acid. Applicants respectfully assert that this finding is applicable to claim 38, as proposed for amendment, and proposed new claims 47-51.

**CONCLUSION**

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No.: 03-1952** referencing **Docket No.: 514112000320**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: July 18, 2008

Respectfully submitted,

By \_\_\_\_\_  
Brian B. Ho

Registration No.: 60,199

MORRISON & FOERSTER LLP  
425 Market Street  
San Francisco, California 94105-2482  
Telephone: 415.268.7624  
Fax: 415.268.7522